IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7393 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NILESH @ LALO MAHENDRABHAI DAVE

Versus

COMMISSIONER OF POLICE

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Appearance:

MR SATISH R PATEL for Petitioner

MR UR BHATT, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 05/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt. 11.5.2000 passed by Respondent No.1 which he has passed in exercise of powers conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial

Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "bootlegger" within the meaning of Sec.2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority has placed reliance on three Prohibition Cases filed for offences punishable under Secs.66(1)(b), 68(c) and 81 of the Bombay Prohibition Act against the petitioner detenu, which are referred to in the grounds of detention. He has also placed reliance on statements of two un-named witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, two statements of witnesses were recorded on 10.5.2000 and on the very same day i.e. on 10.5.2000, the detaining authority verified the said two statements of witnesses and he passed an order of detention on the next day i.e. on 11.5.2000 which is challenged in this writ petition.

3. Though Rule has been served upon each respondent,the respondents have not filed affidavit-in-reply in reply to the Writ Petition controverting the grounds mentioned in Memo thereof.

4. Shri S.R.Patel, the learned advocate for the petitioner has argued that the detaining authority has placed reliance on statements of two witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act but looking to the respective dates of statements, date of verification of said statements and date of passing an order of detention, said claim of privilege is not genuine, and therefore, it violates mandate given in Art.22(5) of the Constitution of India. He has placed reliance on the case of KALIDAS CHANDUBHAI KAHAR Vs. STATE OF GUJARAT & OTHERS, reported in 1993(2) G.L.R. 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under Sec.9(2) of the Act. In this case, from papers of grounds of detention, it appears that he had no time to do such exercise, and therefore, the privilege claimed by him is not genuine. Looking to the facts and circumstances of the present case, this present case squarely falls within the four corners of the case cited by Mr.Patel.

5. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 11.5.2000 passed by Respondent No.1 with respect to

petitioner-detenu is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 05.10.2000. (H.H.MEHTA,J.)
ccshah